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JAN 26 1993

FEDERAL COMMUNICATIONS COMMISSION  
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January 25, 1993

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JAN 26 1993

Federal Communications Commission  
1919 M Street N.W.  
Washington, D.C. 20554

FCC - MAIL ROOM

Re: Cable Television Rulemaking,  
Docket Number 92-266, Rate  
Regulation

Dear Sir or Madam:

Our firm is the City/Town Attorney for four local franchising authorities in Florida, the Cities of Inverness, Crystal River, Dunnellon and the Town of McIntosh. They all have similar cable systems within their boundaries, and share many of the same concerns. I will address these concerns with this comment letter, which is intended to cover all four local franchising authorities above.

First of all, you seek comment regarding the approach to be used. A "benchmark approach" and a "cost-based approach" have been proposed as potential rate regulation structures. On behalf of the franchising authorities which I represent, I would strongly urge the "benchmark" approach, for the following reasons:

1) It is based on areas with effective competition. This will provide for fairer subscriber rates across the board, nationwide. The most reasonable rates are obviously those in competitive areas. Since the actions of the cable industry are to create a monopolistic system whenever possible, the majority of Americans will benefit.

2) It will allow smaller areas the same lower-rate benefits. Cable competition will be the least likely in market areas with lower population levels, since start-up costs are higher in those areas. These are also the areas where alternatives to cable service are the most limited. It is often difficult to receive the traditional network and educational channels in these areas, due to distance from major centers. Sattelite dish transmission would work, but price-wise is still out of the range of most Americans.

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This leaves them with the choice of cable or poor (if any) reception. Obviously these are the geographic areas where cable companies holding a monopoly can hold subscribers hostage. The benchmark rate will assist in making this less likely.

3) It encourages efficiency and quality by discouraging higher costs related to poorly managed cable operations. Companies will have to provide cost-effective service to the consumer. Constant repair costs and service difficulties caused by low quality equipment and personnel will be borne by the cable operator. They will desire to keep these costs down and will become more efficient in their operations. Poorly-run companies will have no choice but to improve or drown in the marketplace. This will benefit the consumer.

4) It encourages a national cable market, as opposed to balkanized local markets. The more national cable television can become in terms of competition, costs, and profits, the more likely it will be that the larger, more capable players (such as phone companies) will enter the cable market. This will likely result in even higher-quality service on a larger scale. Few can argue with the proposition that in general people are much more satisfied with their telephone service than with their cable service. These larger companies have more funds available for research and development to improve the product. This is also of great interest to the consumer and the local franchising authority.

One further comment on the benchmarking system is needed. The F.C.C. must provide a framework of regulation which is strict enough to prevent cable operators from increasing their rates over the benchmark without good reason. There will obviously be some occasions where the operators will have good cause. However, they must not be allowed to easily pass their own inefficiency and inaction off on the consumer. Additionally, the process needs to be reviewed frequently. A temporary situation may occur justifying a higher rate, such as costs associated with a natural disaster. The company will likely be able to justify a higher rate as it repairs and replaces its system. However, once this is done, the rates must return to their former position, and this must happen as rapidly as is reasonable. Frequent review will allow for needed adjustments, and would likely benefit everyone.

It is also incumbent to point out that the effect of the F.C.C. decision, and the Congressional decision, to prevent rate regulation except for the "basic service tier", is likely to drive out local authorities from the rate regulation scheme. The definition of "basic cable service" itself accomplishes this. The way cable is sold in many market areas does not distinguish clearly between the "basic tier" channels and the next higher level of service, such as ESPN, A&E, and CNN. I believe it would be fair to

say that the average consumer includes those networks in their definition of "basic cable". In the markets of which I am familiar, I am unaware of cable companies affirmatively offering the "basic" option to consumers. They would likely have to be "in the know" and ask for basic only. I know that I personally did not realize that I was subscribing to two levels of television service until I became involved in this representation and read the Cable Act. The average consumer defines "basic cable" differently than you do, and the cable operators have done nothing to discourage this misapprehension.

Therefore, the only regulation available to local authorities is the ability to regulate that which the average citizen could receive for free by putting up a good antenna on their house. People do not think of this as "cable TV". Frankly, they should not think of that as "cable TV". I do not know of a single individual who subscribes to what is defined as "basic cable service" under the Act. People subscribe to get more channels. I would suggest that almost no one will subscribe to basic service only when the new rules go into effect, just as before. People will still get the same service as they have.

Why does this hurt the concept of local rate regulation? When local authorities, translate: elected public officials, undertake to regulate rates, they must do it for the benefit of the citizens who make up their constituency. Because they are elected officials, not only must they act for the benefit of the public, but the public must perceive that they are doing so. This is the problem - the local authorities do not have the power to do anything which the public will perceive to be good. When the new scheme takes effect, consumers will find out that they are paying X dollars for the basic tier. For many, this will be the first time they realize how much they have been paying all along for programming they could get with a good antenna. They will not be happy. No matter how low the benchmark rate is for basic cable, it will likely be much higher than the consumer thinks it is worth. Who will be responsible for this problem? For those cities who choose to take on rate regulation, the public will perceive the officials to be at fault. However, they will not be able to truly do much about the situation. The minimum rate that could be set by them will still be more than the public will perceive the service to be worth. This is not good when you are subject to the whims of the ballot box. Therefore, the inclination will be to let the F.C.C. do it, so that at least they will be to blame instead of the local officials.

The other problem will be that the public will likely not understand these limitations fully anyway. When the F.C.C. allows a rate hike for the higher tier (i.e. ESPN, A&E, etc.), the consumer will blame the local authority because, after all, they are

regulating the rates. The fact that the local authority is only regulating some of the rates will be lost on most of the general public. This is not to imply stupidity - only those familiar with the Cable Act will really understand the scheme. Most attorneys will not even fit into that group. Again, in order to avoid blame for something over which they have no control, most authorities may decide that the prudent course will be to abdicate this responsibility to the F.C.C.

The only way to provide for meaningful local regulation of rates will be to extend the authority to the next tier of programming. I realize that the F.C.C. does not have that authority; it must come from Congress. The system simply will not work when the definition of "basic cable" that we are working under is different from that which the people are working under. We have allowed cable to be marketed in such a way that the average American believes the basic programming tier to be inclusive of ESPN, A&E, etc., and that only channels such as HBO, Disney, and Cinemax are "different". Retraining the public to the new rules will be difficult, especially in light of the fact that they will finally realize that they are paying a large chunk of their total bill for something that was available to them without cost. Finding out that they have been paying an even greater amount for that programming before the new Cable Act will not help matters. They will merely have another reason to suspect that they are being quietly fleeced by those stronger than they are, such as cable companies and the government. The only out for the local authorities will be to let you do it and say "It's not my fault", hoping the public will believe them. This is not the way we are supposed to operate here.

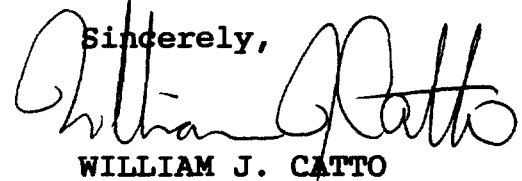
Lastly, I must point out that the system under which local authorities can comment on these matters is flawed. I know that it is the normal federal procedure being followed, but the normal procedure provides poor access for meaningful comment. For example, in Citrus County, Florida, where about 100,000 people live, there are no locations which subscribe to or receive the Federal Register of which I am aware. My attempts to gain information and request materials by phone were met with indifference, what could best be described as a "run-around", and at least one office which was un-staffed on three occasions, leaving only an answering machine to take my messages, which by the way, were never answered. I have, nonetheless, been able to acquire enough basic material to comment on the proposed rules. I hope that others have not been deterred because of the process.

Please consider my comments on the proposed rules on rate regulation. This is destined to become one of the major consumer issues of the next decade, and both careful and critical

Federal Communications Commission  
January 25, 1993  
Page 5

consideration must be given to ensure fairness for all concerned.

Sincerely,

A handwritten signature in cursive script, appearing to read "William J. Catto".

WILLIAM J. CATTO

WJC/tam

xc: City of Inverness  
City of Crystal River  
City of Dunnellon  
Town of McIntosh